



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 00-168, 00-44; FCC 11-162]

Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee
Public Interest Obligations; Extension of the Filing Requirement For Children's
Television Programming Report (FCC Form 398)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts an Order on Reconsideration that vacates Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement For Children's Television Programming Report (FCC Form 398), MB Docket No. 00-168, 00-44, FCC 07-205, Report & Order, ("Order"). The Order created a standardized form for the quarterly reporting of programming aired in response to issues facing a television station's community and a requirement that portions of each television station's public inspection file be placed on the Internet. The Order was never implemented.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Holly Saurer, Holly.Saurer@fcc.gov of the Policy Division, Media Bureau, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Order on Reconsideration in MB Docket No. 00-168, 00-

44, FCC 11-162, adopted October 27, 2011, and released October 27, 2011. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Summary of the Final Rule:

I. INTRODUCTION

1. In this Order on Reconsideration we take steps to modernize the way television broadcasters inform the public about how they are serving their communities. We vacate the prior Report and Order,¹ thereby resolving pending petitions for reconsideration of that order, re-codify the public file rules in existence prior to adoption of the Report and Order, and seek comment on the proposals set forth in a Further Notice of Proposed Rulemaking.

¹ In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Report and Order, 73 FR 13452 (2007) (“Report and Order”); In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Erratum, 73 FR 30316 (2007).

II. BACKGROUND

2. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. Broadcasters are afforded considerable flexibility in how they meet that obligation, but they must maintain a public inspection file, which gives the public access to information about the station's operations and enables members of the public to engage in an active dialogue with broadcast licensees regarding broadcast service. Among other things, the public inspection file must contain an issues/programs list, which describes the "programs that have provided the station's most significant treatment of community issues during the preceding three month period." The original Notice of Proposed Rulemaking in this proceeding grew out of a prior Notice of Inquiry, which explored the public interest obligations of broadcast television stations as they transitioned to digital.² In the 2000 NPRM, the Commission concluded that "making information regarding how a television broadcast station serves the public interest easier to understand and more accessible will not only promote discussion between the licensee and its community, but will lessen the need for government involvement in ensuring that a station is meeting its public interest obligation." The Commission tentatively concluded to require television stations to use a standardized form to report on how they serve the public interest. The Commission also tentatively concluded to require television licensees to make the contents of their public inspection files, including the standardized form, available on

² Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Notice of Proposed Rulemaking, 65 FR 62683 (2000) ("NPRM"); In the Matter of Public Interest Obligations of TV Broadcast Licensees, Notice of Inquiry, 65 FR 4211 (1999) ("NOI").

their stations' Internet websites or, alternatively, on the website of their state broadcasters association. In 2007, the Commission adopted a Report and Order implementing these proposals.

3. Following the release of the Report and Order, the Commission received petitions for reconsideration from several industry petitioners and public interest advocates. The industry petitioners raised a number of issues regarding the standardized form and the online posting requirement, generally contending that the requirements were overly complex and burdensome. Public interest advocates argued that the political file³ should be included in the online public file requirement rather than exempted as provided in the Report and Order, and that the standardized form should be designed to facilitate the downloading and aggregation of data for researchers. In addition, five parties appealed the Report and Order, and the cases were consolidated in the United States Court of Appeals for the D.C. Circuit. The D.C. Circuit granted a petition to hold the proceeding in abeyance while we review the petitions for reconsideration. Challenging the rules in a third forum, several parties opposed the information collection contained in the Report and Order at the Office of Management and Budget ("OMB") under the Paperwork Reduction Act. Because of the multiple petitions for reconsideration, the Commission has not transmitted the information collection to OMB for its approval, and therefore the rules adopted in the Report and Order have never gone into effect.⁴

³ Sections 73.3526(e)(6), 73.3527(e)(5) and 73.1943 of the Commission's rules require that stations keep as part of the public inspection files a "political file."

⁴ See also 47 CFR 73.3526, effective date nt. 2; 47 CFR 73.3526, effective date note; 47 CFR 73.1201, effective date note 2.

4. In June 2011, a working group including Commission staff, scholars and consultants released “The Information Needs of Communities” (“INC Report”), a comprehensive report on the current state of the media landscape.⁵ The INC Report discussed both the need to empower citizens to ensure that broadcasters serve their communities in exchange for the use of public spectrum, and also the need to remove unnecessary burdens on broadcasters who aim to serve their communities. The INC Report provided several recommendations relevant to this proceeding, including eliminating unnecessary paperwork and moving toward an online system for public disclosures in order to ensure greater public access. The INC Report also recommended requiring that when broadcasters allow advertisers to dictate content, they disclose the “pay-for-play” arrangements online as well as on the air in order to create a permanent, searchable record of these arrangements and afford easy access by consumers, competitors and watchdog groups to this information. The Report also suggested that governments at all levels collect and publish data in forms that make it easy for citizens, entrepreneurs, software developers, and reporters to access and analyze information in order to enable mechanisms that can present the data in more useful formats, and noted that greater transparency by government and media companies can help reduce the cost of reporting, empower consumers, and foster innovation.

⁵ “The Information Needs of Communities: The Changing Media Landscape in a Broadband Age,” by Steven Waldman and the Working Group on Information Needs of Communities (June 2011), available at www.fcc.gov/infoneedsreport. As noted in the INC Report, the views of the report “do not necessarily represent the views of the Federal Communications Commission, its Commissioners or any individual Bureaus or Offices.” Id. at 362.

5. In the Order on Reconsideration, we conclude, in light of the reconsideration petitions we received with respect to the Report and Order and the comments and replies thereto, that the best course of action is to vacate the rules adopted in the Report and Order and develop a new record upon which we can evaluate our public file and standardized form requirements

III. ORDER ON RECONSIDERATION

6. We issued the 2007 Report and Order to modernize broadcasters' traditional public file requirement to improve the public's access to information on how the stations are serving their local communities. We remain dedicated to that objective and to bringing broadcast disclosure into the 21st century. Nonetheless, the reconsideration petitions we received from broadcasters and public interest advocates and the responses thereto have persuaded us to reexamine the balance we struck in 2007 between public access to station information and the burden providing such access imposes on broadcasters. In particular, the Report and Order was based upon an NOI and an NPRM that were issued over a decade ago, and the record upon which those rules were adopted does not reflect the rapid technological advances that have occurred over the last ten years. Furthermore, the Report and Order was issued approximately three and a half years ago, and since then we have seen even more technological and marketplace changes that may be pertinent to our consideration of broadcasters' public disclosure obligations. In light of these considerations, we conclude that the best course of action is to take a fresh look at the policy issues raised in this proceeding.

7. We further conclude that we should vacate the Report and Order. The rules adopted in that order cannot take effect without OMB approval of the information collection under the Paperwork Reduction Act, and we see no reason to undertake that process given our decision to take a fresh look at the issues. Accordingly, vacating the Report and Order will have no practical effect on any party. Moreover, the record compiled thus far in this proceeding will continue to be available to any party going forward, and it will also be incorporated into the new docket we will create to focus on the standardized form. In these circumstances, we see no benefit to keeping the Report and Order in place, and by vacating that decision, we remove any procedural or regulatory uncertainty that might otherwise arise if we failed to take action to respond to the reconsideration petitions that have been filed while moving forward to reevaluate the issues.⁶ Although the 2007 rules never became effective, they appear in the Code of Federal Regulations (“CFR”), while the pre-existing public file rules, which remain in effect, were removed from the CFR. For purposes of clarification, these pre-existing

⁶ The Commission has inherent authority to revisit its policy determinations at any time, and when it does so, it “need not demonstrate to a court’s satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.” FCC v. Fox Television Stations, Inc., 129 S. Ct. 1800, 1811 (2009). For these reasons, we do not believe that the *Report and Order* in any way binds or constrains our ability to reexamine our policies based upon an updated record. In the same vein, our decision to vacate the Report and Order should not be interpreted as an affirmative rejection of the rules or policies contained therein. Thus, our decision to take a fresh look does not preclude us from deciding that certain aspects of the Report and Order were correctly decided and should be re-adopted.

public file rules are being added back to the CFR, as reflected in the rules as outlined in the document. We believe that it is important to re-codify the existing rules, so that the CFR reflects the rules in existence at this time, and so that the public and stations can clearly find the public file and station identification requirements.

8. For the foregoing reasons, we grant the petitions for reconsideration that were filed, to the extent our vacatur of the Report and Order grants the relief requested by the petitions. In all other respects, the reconsideration petitions are dismissed as moot.

IV. PROCEDURAL MATTERS

9. The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that pursuant to the Sections 4(i), 303 and 405 of the Communications Act, 47 U.S.C. 154(i), 303, and 405, the Report and Order released on January 24, 2008 in the above captioned proceeding is VACATED on our own motion, and 47 CFR 73.1201(b), 3526(b) and (e)(11) and 3527(b) and (e)(8) will be re-codified consistent with the rules outlined in this document.

11. IT IS FURTHER ORDERED that pursuant to Sections 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 405, and Section 1.106 of the Commission's rules, 47 CFR 1.106, the Petitions for Reconsideration filed by the petitioners listed in Appendix A ARE HEREBY GRANTED IN PART AND ARE OTHERWISE DISMISSED AS MOOT.

List of Subjects in 47 CFR Part 73

Television.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§73.1201 [Amended]

2. Section 73.1201 is amended by removing paragraph (b)(3).

3. Section 73.3526 is amended by removing paragraphs (b)(1) and (b)(2) and (e)(9)(iii); and revising paragraphs (b) introductory text and (e)(11)(i) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(b) Location of the file. The public inspection file shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

* * * * *

(e)(11)(i) TV issues/programs lists. For commercial TV and Class A broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December, April 10 for the quarter January—March, etc.) The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs

shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

* * * * *

4. Section 73.3527 is amended by removing paragraphs (b)(1), (b)(2), (e)(8)(i) and (e)(8)(ii); and revising paragraphs (b) introductory text and (e)(8) introductory text to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(b) Location of the file. The public inspection file shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

* * * * *

(e)(8) Issues/Programs Lists. For nonexempt noncommercial educational broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October–December, April 10 for the quarter January–March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the

public inspection file until final action has been taken on the station's next license renewal application.

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[FR Doc. 2011-29505 Filed 11/16/2011 at 8:45 am; Publication Date: 11/17/2011]